

VIRGINIA HOUSING STUDY COMMISSION

1997 Annual Report
to the Governor and
General Assembly of Virginia

VIRGINIA HOUSING STUDY COMMISSION

GENERAL ASSEMBLY OF VIRGINIA

The Honorable Alan A. Diamonstein

Chairman
Virginia House of Delegates
94th Legislative District
Newport News

The Honorable James F. Almand

Virginia House of Delegates
47th Legislative District
Arlington

The Honorable Franklin P. Hall

Virginia House of Delegates
69th Legislative District
Richmond

The Honorable William C. Mims

Virginia House of Delegates
32nd Legislative District
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The Honorable Jackie T. Stump

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3rd Legislative District
Oakwood

The Honorable Charles L. Waddell

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The Honorable Stanley C. Walker

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DELEGATE ALAN A. DIAMONSTEIN,
COMMISSION CHAIRMAN

INTRODUCTION

BACKGROUND

Established by the 1970 Virginia General Assembly, the Virginia Housing Study Commission was originally mandated "to study the ways and means best designed to utilize existing resources and to develop facilities that will provide the Commonwealth's growing population with adequate housing." The Commission was further directed to determine if Virginia laws "are adequate to meet the present and future needs of all income levels" in Virginia, and to recommend appropriate legislation to ensure that such needs are met.

The Commission is comprised of eleven members, including five members of the Virginia House of Delegates, three members of the Virginia State Senate, and three gubernatorial appointees. Delegate Alan A. Diamonstein of Newport News has served as the Commission's Chairman since soon after its establishment.

The Commission has long been recognized as a forum for new ideas in Virginia housing, and as a focal point for helping to develop consensus for such ideas. Nationally, the Commission is the only such entity that works closely with the public and private sectors and nonprofit organizations to develop workable solutions to housing problems, and advocates within state government for their implementation.

1971 - 1987

From 1971 throughout the early 1980s, the Commission introduced numerous legislation initiatives, subsequently passed by the Virginia General Assembly, to further its goal of ensuring safe, decent affordable housing for every Virginian. Commission accomplishments during that time period include:

- establishment of a state office of housing, now the Virginia Department of Housing and Community Development
- establishment of the Virginia Housing Development Authority
- passage of the Uniform Statewide Building Code, and establishment of the State Technical Review Board and local boards of building appeals
- passage of the Virginia Residential Landlord and Tenant Act
- passage of the Virginia Mobile Home Lot Rental Act
- promulgation of design standards to ensure accessibility by disabled persons to public buildings
- passage of numerous legislative initiatives to foster effective operation, management, and creativity of Virginia Redevelopment and Housing Authority
- passage of the Virginia Condominium Act
- passage of the Virginia Real Estate Cooperative Act
- passage of the Virginia Timeshare Act
- passage of legislation coordinating fire safety programs in Virginia.

NATIONALLY, THE COMMISSION IS THE ONLY SUCH ENTITY THAT WORKS CLOSELY WITH THE PUBLIC AND PRIVATE SECTORS AND NONPROFIT ORGANIZATIONS TO DEVELOP WORKABLE SOLUTIONS TO HOUSING PROBLEMS, AND ADVOCATES WITHIN STATE GOVERNMENT FOR THEIR IMPLEMENTATION.

1987 - PRESENT

Following a period of dormancy, the Housing Study Commission was reactivated in 1987. That year, the Commission proposed the creation and capitalization of the landmark Virginia Housing Partnership Fund. In 1988, at the Commission's recommendation, the General Assembly established the Fund and increased state allocations for housing programs from \$400,000 to \$47.5 million for the 1989-90 biennium. Other successful 1987-88 recommendations include the establishment of a Virginia income tax voluntary contribution program for housing programs, the Virginia Housing Foundation (now the Virginia Community Development Corporation), and the annual Governor's Conference on Housing.

Commission recommendations embraced by the 1989 General Assembly include: a state low-income housing tax credit program; state authorization of such flexible zoning techniques as planned unit developments, mixed unit developments, and density bonuses; and exemption of nonprofit housing organizations from tangible personal property tax on materials purchased for the development of affordable housing. In 1990, the General Assembly approved additional Commission initiatives, including: creation and capitalization of the landmark Indoor Plumbing Program; a tax credit program for landlords providing rent discounts to low-income elderly or disabled tenants; a legislative mandate that localities study affordable housing in preparing their comprehensive plans; and legislation requiring localities to provide for the placement of double-wide manufactured housing in districts zoned primarily for agricultural purposes.

Commission recommendations passed by the 1991 General Assembly include: amendments to the Virginia Fair Housing law to ensure that Virginia law is substantially equivalent to federal law; amendments to the Virginia Residential Landlord and Tenant Act reducing the exemption for single family rental housing from ten to four units held by owners of such property (and thereby ensuring that some sixty percent of such rental units in the state are covered by the Act); and establishment of a Virginia Manufactured Housing Licensing and Transaction Recovery Fund.

The 1992 General Assembly approved the following Commission recommendations: comprehensive consumer protection language in the Virginia Mobile Home Lot Rental Act; a one-time right of redemption of tenancy prior to an action for eviction or unlawful detainer; expansion of the Virginia tax credit program fostering rent discounts to low-income elderly or disabled tenants; and restoration of the Virginia Housing Partnership Fund to the Virginia General Fund Budget.

In its 1993 Session, the General Assembly approved comprehensive Commission recommendations related to the operation and management of condominium, cooperative, and property owners' associations. The Assembly also approved the Commission's landmark legislation designed to assert the responsibility of localities to consider the affordable housing needs of a more broadly defined community, as well as its recommendations to extend the innovative state tax check-off for housing and rent reduction tax credit programs.

In 1994, the General Assembly approved these Commission recommendations in the area of homeless prevention: banning self-help evictions in the case of all residential leases, and allocating additional funding for the Virginia Homeless Intervention Program,

originally a Commission initiative, to ensure service to additional households needing temporary assistance to prevent homelessness.

In the area of blighted housing, the Assembly approved Commission recommendations which authorize localities to: acquire and rehabilitate or clear individual properties which constitute "spot blight" in a community; require the issuance of certificates of compliance with current building regulations after inspections of residential buildings, located in conservation and rehabilitation districts, where rental tenancy changes or rental property is sold; and control the growth of grass and weeds on vacant property as well as property on which buildings are located.

The 1994 General Assembly also approved the following Commission recommendations: authorization for all Virginia localities to develop affordable dwelling unit (ADU) ordinances; authorization for VHDA to enter into such alternative bond financing methods as "swap agreements" whereby VHDA may issue adjustable rate mortgage loans; and legislation to ensure efficient and effective administration of the Manufactured Housing Licensing and Transaction Recovery Fund Law.

In its 1995 Session, the General Assembly approved two Commission recommendations relating to landlord-tenant law in Virginia. In response to requests by tenants seeking to make their neighborhoods more safe, the Commission moved to reduce to fifteen days the time period in which a landlord may initiate an eviction proceeding following service of process on a tenant who has committed a criminal or willful act not remediable and which poses a threat to the health or safety of other tenants. In response to requests to help prevent eviction-related homelessness, the Commission initiated reform of Virginia removal bonds, fostering removal of eviction actions from general district to circuit court in cases not involving non-payment of rent.

The 1995 General Assembly also approved the Commission's comprehensive package of legislation addressing blighted and deteriorated housing as follows.

- To address violations of the Virginia Uniform Statewide Building Code, the Commission clarified that every Virginia circuit court has jurisdiction to award injunctive relief in cases involving USBC violations. The Commission also mandated that the local building department enforce Volume II (Building Maintenance Code) of the USBC where the department finds that there may be a violation of Volume II, Section 105 (Unsafe Buildings).
- To help localities combat the growing problem of drug gang-related graffiti, the Commission also initiated legislation fostering local government removal of graffiti from public or private structures.
- To assist localities in identifying and locating owners of blighted properties, the Commission initiated legislation which provides that the name and address of the owner of real property must be included in local land book records.
- To address concerns of localities that, by paying one year of delinquent taxes, owners may effectively preclude tax sale of such property indefinitely, the Commission initiated legislation authorizing localities to enter into a lien agreement with the owner of tax-delinquent property, prior to the date of a tax sale of such property by the locality, in which such owner agrees to pay all delinquent taxes, penalties, interest, and costs on same.

IN ADDITION TO
LEGISLATIVE AND
STUDY ACTIVITIES, THE
COMMISSION RESPONDED
TO HUNDREDS OF
INQUIRIES REGARDING
HOUSING AND
COMMUNITY
DEVELOPMENT POLICY,
FINANCE, AND
REGULATORY ISSUES.

- To foster additional local revitalization efforts, the Commission initiated legislation which authorizes localities without redevelopment and housing authorities to engage in "experiments in housing," e.g., homesteading programs.

The Commission's 1995 study agenda and subsequent 1996 legislation focused on expansive soils, building code matters, and community land trusts. Its landmark legislation on soils and related building code issues set new standards in seeking to provide localities, the homebuilding industry, and homeowners a framework for addressing problem soils found statewide.

In 1996, the Commission focused on a spectrum of housing issues in a climate characterized, nationally and in the Commonwealth, by changes in the housing industry. The 1997 General Assembly approved the Commission's package of legislation relating to such issues as preservation of affordable housing subsidized under federal programs and with subsidy contracts expiring; homeless children; common interest communities; and the composition of the state Board of Housing and Community Development.

1997 WORK PROGRAM

The Commission in 1997 focused on the following broad areas of study: strategies to foster installation of indoor plumbing; residential rental security deposit returns and interest rates; condemnation by public housing authorities; common interest community association issues; education and licensure issues relating to the multifamily residential housing industry; affordable assisted living for the elderly; and allocations and production data for the Virginia Housing Partnership Fund. After reviewing public comment, issue papers, and Subcommittee recommendations, the Commission reached unanimous consensus on the recommendations published in this report.

In addition to legislative and study activities, the Commission responded to hundreds of inquiries regarding housing and community development policy, finance, and regulatory issues. Its Executive Director met regularly with board members and key staff of the Virginia field offices of the U. S. Department of Housing and Urban Development and the U. S. Department of Agriculture/Rural Development, Department of Housing and Community Development, Virginia Housing Development Authority, Virginia Community Development Corporation, Virginia Interagency Action Council for the Homeless, and Virginia Housing Coalition, as well as housing advocates, government officials, and industry representatives around the Commonwealth. The Director also played an active role in the national housing and community development arena, serving as a member of the Board of Directors of the National Housing Conference; as Chair of the American Bar Association Forum on Affordable Housing and Community Development Law/Committee on State and Local Programs; as a representative to the ABA Commission on Homelessness and Poverty; and as a presenter to the ABA 1997 Conference on Affordable Housing and Community Development Law.

EXECUTIVE SUMMARY

Following is a brief summary of Virginia Housing Study Commission unanimous recommendations to the Governor and the 1998 General Assembly of Virginia.

House Bill 1634 (Residential Rental Security Deposits), carried over to the 1998 General Assembly Session and sent to the Commission by the House Committee on General Laws, would amend *Code of Virginia* provisions relating to computation of interest on residential rental unit security deposits. The current statute provides generally that, as of and beginning January 1, 1995, interest must be paid on security deposits for residential rental units in cases where such deposits are held for more than thirteen months after the date of the rental agreement for continuous occupancy of the same dwelling unit. Interest is to be computed in six-month increments, and is to be based on the Federal Reserve Board discount rate. The Commission recommends simplified language providing that the landlord shall accrue interest at an annual rate equal to the Federal Reserve Board discount rate as of January 1 of each year on all property or money held as security (for more than thirteen months after the date of the rental agreement for continuous occupancy of the same dwelling unit).

House Bill 2453 (Condemnation by Public Housing Authorities), carried over to the 1998 General Assembly Session and sent to the Commission by the House Committee on General Laws, would amend certain *Code of Virginia* provisions relating to condemnation of real property by public housing authorities. The Commission recommends the following *Code* amendments to address current concerns relating to mandatory evidence, notice, and property appraisals:

- Provide that condemnation proceeding commissioners may hear evidence of the value of the property, including but not limited to an owner's property appraisal.
- Require that, prior to the adoption of any redevelopment or conservation plan, an authority send by certified mail, postage prepaid, to at least one owner of every parcel of property to be acquired two points of information: a) notice that the owner's property is to be acquired and b) notice that the owner has the right to appear in any condemnation proceeding and present defenses to the proposed taking.
- Require that, at the time an authority makes its price offer to the property owner, the authority must also provide the owner with a certificate, signed by a licensed and certified general real estate appraiser, setting forth the appraiser's opinion of the fair market value of the property. Such certificate is to be provided the owner together with two comparable property sales, if available.

House Bill 2543 (Amendment of Declarations of Property Owners' Associations) was carried over to the 1998 General Assembly Session and sent to the Commission by the House Committee on General Laws. In many established common interest communities, the association declaration requires an extremely high majority consent to amend governing documents. To facilitate the amendment process, the Commission makes the following recommendations:

- Provide that an association may amend a declaration by agreement of owners of two-thirds of the lots subject to that declaration.



SENATOR STANLEY C. WALKER

- Amend the POA Act to be consistent with amendment provisions for the Condominium Act in limiting the time period in which validity of an amendment may be challenged to one year.
- Conform the POA Act to the Condominium Act in providing that agreement of the required majority of lot owners to any amendment of the declaration must be evidenced by their execution of the amendment, and that such amendment will become effective when a copy is recorded together with a certification, signed by the principal officer of the association or such other officer(s) as the declaration may specify, that the requisite majority of the lot owners signed the amendment.

House Joint Resolution 554 (Indoor Plumbing Assistance), passed by the 1997 General Assembly, requests the Commission to study the feasibility of developing an indoor plumbing assistance program for low-income Virginians capitalized through voluntary utility invoice-generated contributions. Noting that more than 46,000 Virginia households daily live without complete indoor plumbing, and thousands more are unable to address water-related crises such as dry or contaminated wells, the Commission makes the following recommendations:

- Establish a voluntary contribution program, to be created and administered by Virginia Water Project and modeled generally on the Virginia Power EnergyShare program, for indoor plumbing assistance in Virginia.
- Request the Virginia Congressional delegation to advocate for additional federal funding, particularly grant monies, for USDA/Rural Development indoor plumbing and housing rehabilitation programs.
- Apprise the Governor of water-related infrastructure needs in localities and seek from the Administration a work plan and timetable for addressing such needs.
- Allocate \$5.0 - \$10.0 million annually in additional new state dollars for indoor plumbing and restore the Virginia Housing Partnership Fund allocations for housing rehabilitation programs.
- Request the Virginia Resources Authority to assess the level, if any, of VRA capital reserve funds which could be allocated to state-identified indoor plumbing needs.
- Involve new fiscal partners, such as coal companies, in addressing indoor plumbing needs in the Commonwealth.
- Convene a study group to review current state and federal regulations for the Community Development Block Grant program, and to review Department of Housing and Community Development Indoor Plumbing/Rehab program regulations to ensure maximum flexibility.
- Convene a study group to identify federal and state resources available to address indoor plumbing needs and coordinate the allocation of such resources.
- Request appropriate parties (including but not limited to state and local governments and water authorities) to provide public education on indoor plumbing needs in Virginia.

To foster reconciliation of provisions of the **Virginia Subdivided Land Sales Act (SLSA)** and the **Virginia Property Owners' Association Act (POA Act)**, the Commission reviewed a comparative analysis of the provisions of each. The SLSA was enacted in 1978 to provide consumer protection against land sales fraud; the POA Act was enacted in 1989 to require certain disclosures to purchasers of lots within developments formed after January 1, 1959, and

with mandatory membership in a community association. The Commission makes the following recommendations:

- Amend the Applicability provisions of the POA Act to provide that the Act supercedes the SLSA.
- Request the Virginia Real Estate Board to consider amending the Annual Report regulations for the Common Interest Ownership Management Information Fund such that the registration fee for developments containing 10 or fewer units or lots is waived.

The Commission also makes the following recommendations relating to common interest communities:

- Amend the Condominium Act and the Property Owners' Association Act (POA Act) to conform the *resale disclosure* provisions of the two statutes.
- Amend the Condominium Act to clarify the current statute and establish a limitation on the time frame for *validity of a proxy*, thereby promoting the holding of annual meetings in a timely manner.
- Amend the Condominium Act and the POA Act relating to mortgagee consent to *amendments made to the condominium instrument or association documents*. Recommended amendments would shorten the time frame for making objections to such amendments to thirty days and clarify that, if mortgagee consent is not required in the document being amended, no notice of such amendment is required.
- Amend the Condominium Act to provide that a *limited common element* (such as a parking or storage space) may be converted to a common element.
- Amend the Condominium Act, Real Estate Cooperative Act, and POA Act to clarify provisions of the same relating to the filing of the *annual report*. More specifically, the amendments would provide that the association certify that it has filed the required annual report with the Virginia Real Estate Board and give the certificate number and date of expiration of the registration.
- Amend the POA Act to provide that any *challenge to a document amendment* must be made within one year of such amendment.
- Amend the POA Act relating to *condemnations* to provide that i) the Board of Directors may determine to convey, ii) the President may unilaterally sign a deed conveying a common area to a condemning authority, and iii) such condemning authority must accept a special warranty deed (by which form of deed most POAs receive title to common areas). This amendment would conform the POA Act to the Condominium Act in regard to the above-referenced condemnation provisions.

At the request of the Apartment and Office Building Association of Metropolitan Washington (AOBA), the Commission reviewed certain issues relating to **training, licensure, and continuing education for re-licensure of multifamily residential and commercial office real estate leasing and property management professionals**. To ensure that the pre-licensing and re-licensing system for realtors, together with the general administration of that system by the Real Estate Board and its administering agency, the Virginia Department of Professional and Occupational Regulation, meets the broad needs of the professional real estate industry as a whole, the Commission recommends that the Virginia Real Estate Board shall incorporate into its proposed regulations and publish those regulations for public comment — prior to the last day the General Assembly in its 1998 session mandates for the

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introduction of legislation — the following provisions relating to continuing education credit for licensed real estate professionals:

- a mandatory two-credit hour requirement for ethics training prior to biannual re-licensing
- a comprehensive listing of courses, pre-approved by the Board, related to the professional competency requirements of the commercial office and multifamily residential industries (as required by 1997 legislation)
- objective criteria for evaluating and approving continuing education course credits and for awarding credit hours for such courses
- approval of recommended course titles, content, and hours of continuing education credit (not more than six hours per course) developed and published by national professional real estate trade associations (e.g., National Apartment Association, National Association of Realtors), unless the Board has documented evidence indicating why such titles, content, and credit hours should not be approved.

At the request of the Commission Executive Director, the Commission launched a study of **affordable assisted living facilities for the elderly**, a concept which has emerged in recent years as an important market-driven link in the continuum of care for the elderly. While assisted living services may be provided in one's home, an assisted living facility is generally defined as a residential setting where appropriate personal care services, 24-hour supervision, and assistance are provided in an environment which fosters maximum independence and promotes individual dignity. The Commission reviewed such considerations as the demographics of Virginia's elderly population, current status of Virginia's assisted living facilities, funding sources for the development and operation of such facilities, and regulatory and other public policy matters relating to affordable assisted living. The Commission study will continue in 1998, with recommendations to be made to the Governor and 1999 General Assembly.

The Commission recommends the following legislation requested by the **Virginia Housing Development Authority**:

- Amend the *Code of Virginia* to authorize VHDA to (a) deposit funds with federal home loan banks, (b) invest its funds in investments rated AA or Aa by Moody's Investors Services, Inc., or Standard & Poor's Rating Group, respectively, and (c) enter into contracts for the custody, securing, and investment of VHDA funds with parties who make loans to VHDA but who are not holders of VHDA notes or bonds.
- Amend the *Code* to permit VHDA to purchase or own its notes or bonds without such notes or bonds or the indebtedness evidenced thereby being canceled or extinguished.
- Amend the *Code* to authorize VHDA to (a) enter into agreements with the federal government (in particular, the U.S. Department of Housing and Urban Development) or other parties to provide services and assistance in the restructuring of federally owned, financed, or assisted multi-family housing developments and (b) to indemnify the federal government or other parties in connection with the provision of such services.

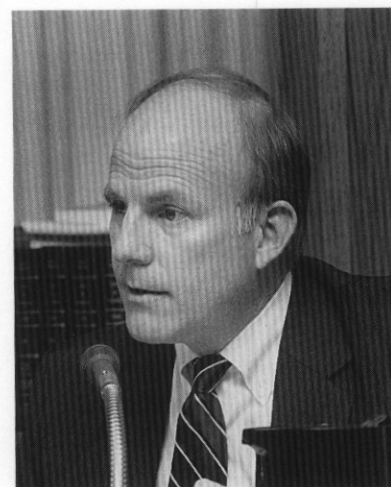
HOUSE BILL 1634

RESIDENTIAL RENTAL SECURITY DEPOSITS

ISSUE

Code of Virginia Section 55-248.11 currently provides generally that, as of and beginning January 1, 1995, interest must be paid on security deposits for residential rental units in cases where such deposits are held for more than thirteen months after the date of the rental agreement for continuous occupancy of the same dwelling unit. Interest is to be computed in six-month increments, and is to be based on the Federal Reserve Board discount rate.

House Bill 1634, patroned by Delegate John Tate, was introduced in the 1997 General Assembly Session and sent to the Virginia Housing Study Commission for further deliberation. The Commission Chairman then referred the bill to the Commission Subcommittee on Real Property Issues, chaired by Delegate James F. Almand.



DELEGATE JAMES F. ALMAND

BACKGROUND

House Bill 1634 as introduced would amend *Code* Section 55-248.11 to provide that interest on security deposits could be computed either based on the Fed discount rate or on that rate paid to depositors in the highest yielding, fully liquid savings account available at the federally insured depository where the landlord maintains an account. As previously noted, the current statute (passed by the 1994 General Assembly) took effect January 1, 1995. A brief history of the security deposit interest rate law may prove instructive.

Prior to the 1994 amendments, from July 1, 1985 - December 31, 1994, landlords were required to pay 5.0 percent per annum interest on security deposits, according to records of the Virginia Apartment and Management Association (VAMA) and the Apartment and Office Building Association of Metropolitan Washington (AOBA).

From July 1, 1982 - June 30, 1985, the requisite interest rate was one-half percent below the rate on passbook savings accounts as stated in Federal Reserve Regulation Q, according to VAMA (effectively 4.75 percent per annum, according to AOBA).

From July 1, 1980 - June 30, 1982, the requisite interest rate was 4.0 percent per annum, according to VAMA and AOBA.

From July 1, 1974 - June 30, 1980, the requisite interest rate was 3.0 percent per annum, according to AOBA archival material.

RECOMMENDATION

The Commission Subcommittee studying HB 1634 unanimously agreed that the currently mandated computation of interest in six-month increments is unworkable for tenants and landlords alike. In addition, the Subcommittee agreed that the new depository language introduced in HB 1634 is lacking in specificity. Rather, the group agreed that the Fed discount rate is a workable standard readily recognizable by landlords and tenants. The group further agreed that it would not be useful to amend or change the standard that is working acceptably as a benchmark for computing interest. Therefore, the Subcommittee

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SUBCOMMITTEE STUDYING
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AGREED THAT THE
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recommended simplified language, subsequently unanimously approved and recommended by the Commission. That language provides that the landlord shall accrue interest at an annual rate equal to the Federal Reserve Board discount rate as of January 1 of each year on all property or money held as security (for more than thirteen months after the date of the rental agreement for continuous occupancy of the same dwelling unit).

RELATED ISSUE

At the request of a Virginia Poverty Law Center attorney, the Subcommittee also considered the related issue of penalties for those landlords who fail to return security deposits in cases where they are legally required to do so. Currently, *Code* Section 55-248.11 (A) provides that, where the landlord wrongfully fails to return the security deposit, the tenant may recover the deposit and interest required to be paid, together with actual damages and reasonable attorney's fees. "Actual damages," it was noted, usually comprise the deposit, interest, and attorney's fees already provided for.

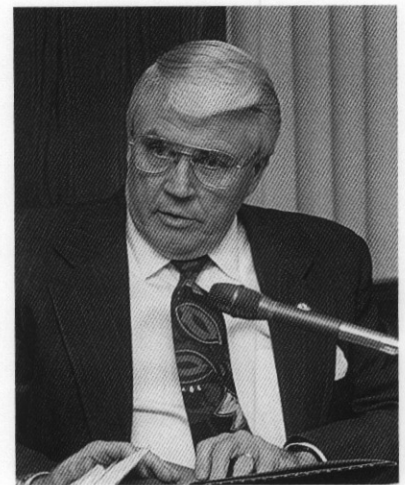
It was also noted that, where Legal Services attorneys are unable to represent tenants alleging wrongful withholding of deposits, such tenants are generally referred to small claims court, although not every Virginia jurisdiction provides such a venue for recovery. Further, it was suggested that wrongful withholding likely occurs more frequently in the case of landlords not covered under the Virginia Residential Landlord and Tenant Act.

After extensive discussion on the matter, the Subcommittee agreed that Legal Services offices should be requested to keep records to determine the extent of alleged failures of landlords to return deposits, and that those records should be provided to the Commission. The Subcommittee also agreed that local governments, the Virginia Municipal League, and the Virginia Association of Counties should be requested to monitor the issue and assist the Commission in determining the extent of wrongful refusal to return deposits.

HOUSE BILL 2453: CONDEMNATION BY PUBLIC HOUSING AUTHORITIES

ISSUE

House Bill 2453 relating to eminent domain by housing authorities was introduced by Delegate Robert Tata and sent to the Virginia Housing Study Commission for further study. Delegate Tata introduced HB 2453 in response to concerns raised by a constituent regarding condemnation proceedings initiated by the Norfolk Redevelopment and Housing Authority (NRHA) pursuant to certain real property in Norfolk's East Ocean View area, which NRHA designated a Conservation Area. The Commission Chairman subsequently referred the bill to a Commission Subcommittee chaired by Delegate Franklin P. Hall. Also appointed to the Subcommittee was Delegate Thelma Drake, whose Norfolk legislative district is affected by the NRHA plan. Other Subcommittee members include representatives of local housing authorities, the real estate industry, and attorneys with expertise in eminent domain law.



DELEGATE FRANKLIN P. HALL

BACKGROUND

The NRHA adopted the East Ocean View Conservation Plan in October 1989. In October 1993, the Plan was amended and approximately 100 acres in the area was designated a redevelopment area. Both the plan and its amended version were approved by the Norfolk City Council following public hearings.

The new redevelopment plan calls for NRHA to acquire about 300 individual properties, and as of July 1, 1997, 40 percent had been so acquired. Of those properties acquired, according to NRHA, three required the application of NRHA eminent domain powers. Acquisition is scheduled for completion by 2002 -- nine years after the announcement of the plan. Meanwhile, much of the designated area sits vacant or boarded, awaiting redevelopment or demolition, as neighborhood property owners find themselves effectively in limbo.

RECOMMENDATIONS

In submitting its recommendations to the Commission, the Subcommittee sought to address concerns regarding certain *Code of Virginia* condemnation provisions. Recommendations address three key provisions of *Code* Section 36-27: 1) mandatory evidence, 2) notice, and 3) property appraisals.

1) *Mandatory Evidence*

Provide that condemnation proceeding commissioners may hear evidence of the value of the property, including but not limited to an owner's property appraisal. (As originally introduced, HB 2453 would have mandated that such evidence include the owner's appraisal, recent tax assessments, and the effect that a pending application for a zoning change, special use permit, or variance may have on the property. However, members of the General Assembly Subcommittee considering the bill during the 1997 Session expressed concerns that such mandatory language would not necessarily be in the best interest of the property owner.)

THE SUBCOMMITTEE DISCUSSED THE CHANGING NATURE OF PUBLIC HOUSING AUTHORITY-SPONSORED, LARGE-SCALE REDEVELOPMENT PROJECTS NATIONALLY, AND SUGGESTED TO THE COMMISSION THAT IT MAY BE APPROPRIATE TO REVIEW LOCAL HOUSING AUTHORITY LAW TO ENSURE THAT, IN THE CURRENT CONTEXT OF REDEVELOPMENT, PROVISIONS ENACTED DECADES AGO REMAIN REASONABLE AND DESIRABLE.

2) *Notice Provisions*

Require that, prior to the adoption of any redevelopment or conservation plan, an authority send by certified mail, postage prepaid, to at least one owner of every parcel of property to be acquired two points of information: a) notice that the owner's property is to be acquired and b) notice that the owner has the right to appear in any condemnation proceeding and present defenses to the proposed taking. (Current law provides that the authority must advertise the public hearing regarding the plans two times in a local newspaper; the proposed language would provide the owner personal notice rather than notice by publication, which personal notice certain authorities in the Commonwealth other than NRHA currently provide.)

3) *Property Appraisals*

Require that, at the time an authority makes its price offer to the property owner, the authority must also provide the owner with a certificate, signed by a licensed and certified general real estate appraiser, setting forth the appraiser's opinion of the fair market value of the property. Such certificate is to be provided the owner together with two comparable property sales, if available. (Such information would assist the property owner in understanding the rationale of the price offered by the authority, and is currently provided in some form by certain authorities in the Commonwealth other than NRHA.)

OTHER ISSUES

The Subcommittee also discussed the changing nature of public housing authority-sponsored, large-scale redevelopment projects nationally. Federal resources available for such projects have diminished substantially in recent years, with little or no expectation that the level of federal redevelopment funds formerly available will be restored. Hence, the Subcommittee suggested to the Commission that it may be appropriate to review local housing authority law to ensure that, in the current context of redevelopment, provisions enacted decades ago remain reasonable and desirable.

The Commission subsequently unanimously approved and recommended all of the Subcommittee's recommendations.¹

¹The Virginia Housing Study Commission and its Executive Director express sincere appreciation to Captain Hollis E. Robertson (USN Ret'd) and Francis N. Crenshaw, Esquire, Counsel to the Norfolk Redevelopment and Housing Authority, for their assistance in this study.

HOUSE BILL 2543:

AMENDMENT OF DECLARATIONS OF PROPERTY OWNERS' ASSOCIATIONS

ISSUE

House Bill 2543 (1997) was introduced by Delegate William C. Mims and referred to the Virginia Housing Study Commission for further consideration at the request of the patron. In turn, the bill was referred by the Commission Chairman to the Commission Subcommittee on Real Property Issues, chaired by Delegate James F. Almand. The bill relates to amendment of declarations of property owners' associations.

BACKGROUND

In many established communities, the association declaration requires an extremely high majority consent to amend governing documents. (As defined in the Property Owners' Association Act (POA Act), the declaration is the recorded document which establishes covenants and restrictions that affect use of lots and common areas within the development.) HB 2543 seeks to facilitate the amendment process.

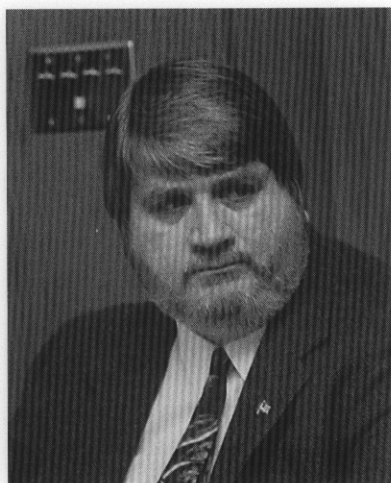
RECOMMENDATIONS

The Subcommittee recommended the following amendments to Section 55-515 of the Property Owners' Association Act, which recommendations were subsequently unanimously approved and recommended by the Commission.

1. Provide that an association may amend a declaration by agreement of owners of two-thirds of the lots subject to that declaration. Such provision would, accordingly, establish by statute authority, currently lacking statutorily, for amending the recorded declaration.
2. Amend the POA Act to be consistent with amendment provisions for the Condominium Act to limit the time period in which validity of an amendment may be challenged to one year.
3. Conform the POA Act to the Condominium Act in providing that agreement of the required majority of lot owners to any amendment of the declaration must be evidenced by their execution of the amendment, and that such amendment will become effective when a copy is recorded together with a certification, signed by the principal officer of the association or such other officer(s) as the declaration may specify, that the requisite majority of the lot owners signed the amendment.



DELEGATE WILLIAM C. MIMS



DELEGATE JACKIE T. STUMP

HOUSE JOINT RESOLUTION 554: INDOOR PLUMBING ASSISTANCE

ISSUE

House Joint Resolution 554, patroned by Delegate Karen Darner, requests the Virginia Housing Study Commission, with representation from the Virginia Water Project/Southeast Rural Community Assistance Project (VWP), Virginia Municipal League, and Virginia Association of Counties, and in conjunction with the Commonwealth's public and private water and water treatment providers, to study the feasibility of developing an indoor plumbing assistance program for low-income Virginians capitalized through voluntary utility invoice-generated contributions. The Commission Chairman in turn referred the study to a Commission Subcommittee chaired by Delegate Jackie Stump and comprised of representatives of the named entities, as well as other agencies active in providing indoor plumbing for low-income Virginians, particularly in rural areas of the Commonwealth.

BACKGROUND

At their first meeting, convened by Delegate Stump at Southwest Virginia Community College, Claypool Hill, Subcommittee members unanimously agreed on the following points.

More than 46,000 Virginia households daily live with incomplete indoor plumbing.

In addition to the need for basic indoor plumbing facilities, thousands of Virginia households also face short-term water-related needs, such as a non-functional well pump, a dry or contaminated well, or the inability to pay a connection fee for public water service.

Due to increased costs triggered by additional federal regulations, there is also a growing demand for assistance in paying for public water services. Moreover, there is consensus among water industry professionals and regulatory agency officials that water rates for small water systems will continue to rise, in some cases dramatically. Even now, many small water systems are not recovering their costs.

Small water systems clients, typical of rural Virginians, are often older residents on fixed incomes, and the demographic trend for the foreseeable future in rural Virginia will continue to shift to an older population. The intersection of rising water bills and a growing low- to moderate-income population on fixed incomes suggests that the demand for financial assistance will grow in the future.

Despite model programs initiated by the Commission and administered in conjunction with local, federal, and other funds, the need for assistance far exceeds available funds. (A total of nearly \$7.1 million, including \$3.1 million in state funding, was available through the FY97 Virginia Indoor Plumbing/Rehab Program.)

The Virginia Power EnergyShare Program, on which an indoor plumbing assistance voluntary contribution program could be modeled, provided assistance totaling about \$1.0 million last year. It is unrealistic to expect that net revenues of a new fund would exceed that amount in the next few years, particularly in the context of steadily decreasing voluntary contributions under the state Tax Check-Off for Housing Program.

The Subcommittee's second meeting was convened in Richmond. At the request of the Subcommittee Chairman, presentations were made by the following: Shockley D. (Hap) Gardner, Jr., Executive Director, Virginia Resources Authority; Thomas B. Gray, Special Projects Manager, Division of Water Supply Engineering, Virginia Department of Health; Lloyd A. Jones, Virginia State Director, USDA Rural Development; and Donald W. Wampler, Program Director, Construction Assistance Program, Virginia Department of Environmental Quality. Each of these speakers presented information on funding available from their respective agencies for indoor plumbing assistance. The Subcommittee noted that, while a voluntary contributions program could prove helping in addressing indoor plumbing needs, additional significant funds and partnerships are needed to address those needs.

VIRGINIA POWER ENERGYSHARE PROGRAM

Virginia Power's EnergyShare program is an example of a utility company-led initiative to assist low-income households unable to pay their winter heating bills due to unemployment or a demonstrated personal crisis situation. From all accounts, it is an excellent program, and a potentially useful model to emulate in the water industry.

EnergyShare assisted over 6,900 households last year, with total financial assistance totaling approximately \$1.0 million. Credits begin in mid-December and continue until the fund is exhausted. Funding for the program comes from a variety of sources: customers, Virginia Power employees, and local businesses and nonprofits.

Virginia Power solicits funds for EnergyShare in two ways. Virginia Power customers have a check-off option on their billing statement for contributions in excess of their regular payment. However, 80 percent of last year's total contributions were received in response to two special seasonal solicitations anticipating heating needs during the coldest part of the year.

Funds collected are directly transferred to an account managed by the Virginia United Way office in Richmond. The United Way then allocates the funds as needed to local distributing agencies, which in turn make payments to local energy vendors to defray expenses of clients recommended to them by intake agencies (e.g., a local Community Action Agency or Department of Social Services). A citizen steering committee oversees the EnergyShare program.

CHALLENGES FACING A UTILITY-RELATED CONTRIBUTIONS PROGRAM

Only a few major energy utilities supply electricity in the Commonwealth; Virginia Power serves approximately 80 percent of the state's population. However, over 1,400 suppliers provide water to state residents. Ninety-seven percent of the citizens of Virginia are consumers of regulated water supplies while the remaining percentage use private water supplies. Ten percent of the systems serve about 90 percent of those consumers relying on community water. Of the nearly 1,400 community water systems in Virginia, 90 percent serve 300 or fewer connections. (Such systems serve full-time populations, e.g., homes or businesses, while non-community systems serve transient populations, e.g., campgrounds or highway rest stops.)

Accordingly, there are dramatically more billing entities in the water industry than in the power industry. This factor seriously complicates a uniform solicitation of funds through the billing process. However, as noted, 80 percent of Virginia Power's EnergyShare contributions come not through monthly billing statements, but from the two special solicitation letters a year.

MORE THAN 46,000 VIRGINIA HOUSEHOLDS DAILY LIVE WITH INCOMPLETE INDOOR PLUMBING, AND IN ADDITION TO THE NEED FOR BASIC INDOOR PLUMBING FACILITIES, THOUSANDS MORE ALSO FACE SHORT-TERM WATER-RELATED NEEDS, SUCH AS A NON-FUNCTIONAL WELL PUMP, A DRY OR CONTAMINATED WELL, OR THE INABILITY TO PAY A CONNECTION FEE FOR PUBLIC WATER SERVICE.

RECOMMENDATIONS

Subcommittee members unanimously agreed that the indoor plumbing issues facing the Commonwealth are extensive and complex, with implications for public health, economic development, workforce education, and environmental protection. Following are recommendations of the Subcommittee, subsequently unanimously approved and recommended by the Commission.

- Establish a voluntary contribution program, to be created and administered by Virginia Water Project, for indoor plumbing assistance in Virginia. The program will be capitalized through individual contributions made in response to solicitations by VWP and local water authorities, which solicitations would be included at least twice yearly in customer invoices. VWP will initiate the contributions program in 1998 and report to the Governor and 1999 General Assembly on the following: total contributions, total allocations, and geographic areas served. It was agreed that VWP is an outstanding entity for initiating and administering the contributions program. The organization already has a well established funding process. In addition, it has a strong, well established network of partnerships with local agencies for assistance referrals. VWP has high name recognition throughout the state, which could facilitate contributions. In addition, the agency's nonprofit status would assure donors that their contributions would be tax-deductible.
- Request the Virginia Congressional delegation to advocate for additional federal funding, particularly grant monies, for USDA/Rural Development indoor plumbing and housing rehabilitation programs.
- Apprise the Governor of water-related infrastructure needs in localities and seek from the Administration a work plan and timetable for addressing such needs.
- Allocate \$5.0 - \$10.0 million annually in additional new state dollars for indoor plumbing and restore the Virginia Housing Partnership Fund allocations for housing rehabilitation programs.
- Request the Virginia Resources Authority to assess the level, if any, of VRA capital reserve funds which could be allocated to state-identified indoor plumbing needs. (The Virginia Housing Development Authority has since 1991 engaged independent consultants to identify the level of its capital reserves that can reasonably be transferred to its Virginia Housing Fund, now the largest such fund in the nation.)
- Involve new fiscal partners, such as coal companies, in addressing indoor plumbing needs in the Commonwealth.
- Convene a study group to review current state and federal regulations for the Community Development Block Grant program, and to review Department of Housing and Community Development Indoor Plumbing/Rehab program regulations to ensure maximum flexibility.
- Convene a study group to identify federal and state resources available to address indoor plumbing needs and coordinate the allocation of such resources.
- Request appropriate parties (including but not limited to state and local governments and water authorities) to provide public education on indoor plumbing needs in Virginia.²

²The Commission and its Executive Director express sincere appreciation to Mary C. Terry, Executive Director, Southeast Rural Community Assistance Project/VWP, for her assistance in this study and for her leadership in undertaking to initiate and administer, through SE/R-CAP/VWP, a Virginia voluntary contributions program for indoor plumbing assistance. The Commission and its Executive Director also express sincere appreciation to Jason L. Gray, now Legislative Director, Southern Rural Development Initiative, Raleigh, North Carolina, and formerly Program Manager, Virginia Water Project, for his assistance in this study.

RECONCILIATION OF THE VIRGINIA SUBDIVIDED LAND SALES ACT AND VIRGINIA PROPERTY OWNERS' ASSOCIATION ACT

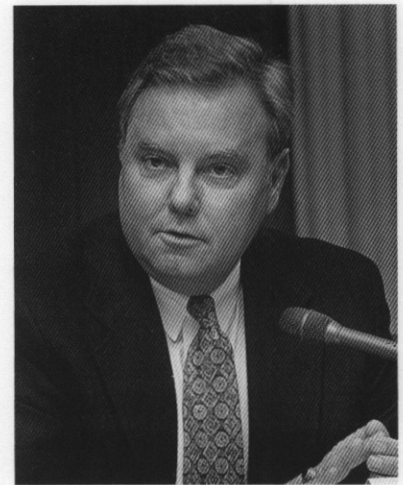
ISSUE

When the Virginia Property Owners' Association Act (POA Act) was enacted in 1989, there was little discussion about the import of this law in view of the existing provisions of the Virginia Subdivided Land Sales Act (SLSA), enacted in 1978. Because the provisions of these laws are somewhat parallel and can both be applied to certain residential developments, concerns have been expressed that inconsistent provisions of these two laws may create confusion. During its 1996 deliberations, the Virginia Housing Study Commission Subcommittee on Common Interest Community Association Issues identified certain conflicting provisions in the two laws, and recommended to the Commission that a comparative analysis of the POA Act and SLSA be undertaken in 1997. Accordingly, the Commission Chairman requested that the Subcommittee, chaired by Delegate James F. Almand, continue its deliberations.

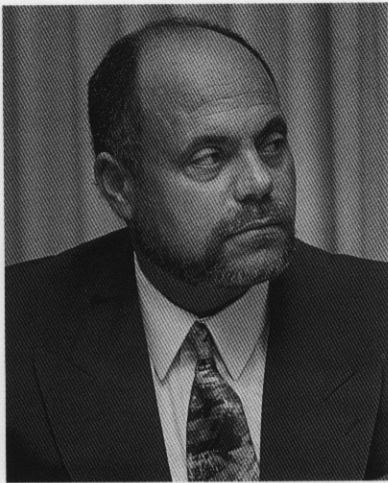
BACKGROUND

The Virginia Subdivided Land Sales Act was enacted as a "mini Interstate Land Sales Act" providing consumer protection against land sales fraud primarily through regulation of lots sold in recreational land developments under land sales installment contracts through a requirement for registration with the Virginia Real Estate Board. The SLSA had an added feature, however, of applying to existing subdivisions. In 1994, amendments to the SLSA removed the requirement for registration with the Virginia Real Estate Board. The only provisions of this law remaining relate to existing subdivisions and address such matters as transfer of control of an association from the developer to the homeowners, the authority to impose special assessments, and the authority to impose liens on lots for non-payment of assessments.

The Virginia Property Owners' Association Act was designed to require certain disclosures to a purchaser of a lot within a development having mandatory membership in a community association. The applicability of the POA Act was restricted to developments formed after January 1, 1959. Subsequent amendments to the law have also further limited and restricted its application. Its focus was not on the development of common interest communities, but, rather, on the continued operation of the community association as well as requiring certain disclosures upon the purchase of a lot.



COMMISSIONER F. GARY
GARCZYNSKI



COMMISSIONER WALTER J. PARKER

RECOMMENDATIONS

Following lengthy discussion of a comparative analysis of provisions of the SLSA and POA Act, the Subcommittee made the following recommendations, each of which were subsequently unanimously approved and recommended by the Commission.

APPLICABILITY

Under Virginia *Code* Section 55-337.5, the SLSA applies to:

- any subdivision of land into 100 or more lots sold or disposed of by land sale installment contracts, for which lot owners are assessed on a regular or special basis
- any existing subdivision of 340 or more lots wherein the developer has concluded its sales efforts for a period of 6 consecutive months and transferred to the association all the title, control, and maintenance responsibilities of the common areas and common facilities.

Under Virginia *Code* Section 55-508, the POA Act applies to developments subject to a declaration initially recorded after January 1, 1959, and property owners' associations incorporated after that date. The Act does not apply to developments subject to a declaration recorded after July 1, 1997, which imposes on the association maintenance or operational responsibilities or on lot owners/occupants a mandatory payment of money less than \$150 annually. In addition, the declaration may specifically provide for applicability.

The Subcommittee recommended that the Applicability provisions of the Property Owners' Association Act be amended to provide that the Act supersedes the Subdivided Land Sales Act.

ANNUAL REPORT

Section 55-516.1 of the Virginia *Code* provides that each property owners' association in the Commonwealth shall file an annual report with the Virginia Real Estate Board. The Subcommittee recommended that the Real Estate Board be requested to consider a modification to its regulations for the Common Interest Ownership Management Information Fund, such that the registration fee for developments containing 10 or fewer units or lots is waived.

The Commission subsequently unanimously approved and recommended each of the recommendations of the Subcommittee.

ADDITIONAL RECOMMENDATIONS

COMMON INTEREST COMMUNITY ISSUES

Following are additional recommendations of the Virginia Housing Study Commission Subcommittee on Common Interest Community Association Issues, all of which were subsequently unanimously approved and recommended by the Commission.

RESALE DISCLOSURE

Amend Section 55-79.97 of the Condominium Act and Section 55-512 of the Property Owners' Association Act to conform the resale disclosure provisions of the two statutes.

(Information to be disclosed upon sale of a unit or lot includes but is not limited to such matters as architectural compliance and contract cancellation rights.)

PROXIES AND VOTING

Amend Section 55-79.77 of the Condominium Act to clarify the current statute and establish a limitation on the time frame for validity of a proxy, thereby promoting the holding of annual meetings in a timely manner.

AMENDMENT OF DOCUMENTS

Amend Section 55-79.73:1 of the Condominium Act and Section 55-515 of the POA Act relating to mortgagee consent to amendments made to the condominium instrument or association documents. Recommended amendments would shorten the time frame for making objections to such amendments to thirty days and clarify that, if mortgagee consent is not required in the document being amended, no notice of such amendment is required.

LIMITED COMMON ELEMENT

Amend the Condominium Act to provide that a limited common element may be converted to a common element. (A limited common element is a common element designated for the exclusive use of the owner of a unit. Examples include storage space, parking spaces, or balconies adjacent to units.) This change will add flexibility in development options relating to limited common elements by authorizing their restoration as common elements.

FILING OF ANNUAL REPORT

Amend the Condominium Act, Real Estate Cooperative Act, and POA Act to clarify provisions of the same relating to the filing of the annual report. More specifically, the amendments would provide that the association certify that it has filed the required annual report with the Virginia Real Estate Board and give the certificate number and date of expiration of the registration.

DOCUMENT AMENDMENT CHALLENGES

Amend the POA Act to provide that any challenge to a document amendment must be made within one year of such amendment. This change would promote closure on the matter for all concerned and would conform the POA Act to the Condominium Act in regard to document amendment challenges.

CONDEMNATION

Amend the POA Act to provide that i) the Board of Directors may determine to convey, ii) the President may unilaterally sign a deed conveying a common area to a condemning authority, and iii) such condemning authority must accept a special warranty deed (by which form of deed most POAs receive title to common areas). This amendment would conform the POA Act to the Condominium Act in regard to the above-referenced condemnation provisions.³

³The Virginia Housing Study Commission and its Executive Director express sincere appreciation to Maria J. K. Everett, Attorney at Law, Virginia Division of Legislative Services, for her assistance in this study.



COMMISSIONER TRACEY S.
DEBOISSIERE

MULTIFAMILY RESIDENTIAL RENTAL INDUSTRY EDUCATION, LICENSURE, AND REGULATORY ISSUES

ISSUE

At the request of the Apartment and Office Building Association of Metropolitan Washington (AOBA), the Commission Chairman placed on the 1997 Commission study agenda the issue of training, licensure, and continuing education for re-licensure of multifamily residential and commercial office real estate leasing and property management professionals. The Chairman subsequently referred the matter to the Commission Subcommittee on Real Property Issues, chaired by Delegate James F. Almand.

In a position paper prepared for use by the Subcommittee, AOBA indicated increasing concern on the part of multifamily residential (and commercial office) leasing and property management real estate professionals, and the trade associations representing them, with regard to Virginia Board for Real Estate approval of continuing education courses pursuant to their re-licensure. Such courses are required by statute and the Board's regulations. AOBA noted that these industries are of the opinion that the Board's regulations, particularly for continuing education courses, and its procedures for reviewing and approving such courses, lack specificity and clarity. In turn, AOBA noted, that lack of clarity has led to inadequate guidance not only to organizations submitting courses for Board approval, but also for the Board itself as it determines subject matter and credit hours appropriate for continuing education courses.

AOBA pointed out the lack of Board instructional materials for use in completing applications for course approval, as well as the lack of materials outlining the Board's procedures for evaluating such applications. AOBA also suggested that, in evaluating and approving credit hours for continuing education courses, the Board may not always act in compliance with its own regulations with respect to awarding credits for each classroom hour/clock hour. Moreover, AOBA suggested, the Board in the past has appeared to have established *ad hoc* criteria with regard to which additional subject matter areas are appropriate for approval for credit.

BACKGROUND

The rapidly expanding increase in the construction, leasing, and property management activities of multifamily housing (and commercial office space) constitutes a major growth industry in Virginia while providing a variety of housing (and office) space to meet the needs of Virginians. Based on 1990 census data, of the nearly 2.5 million housing units in the Commonwealth, approximately 772,000 (31 percent) of those units are located within multifamily housing structures. Those numbers represent an increase of more than 300,000 multifamily units since 1980, and an increase of 494,000 units since 1970.

As Virginia continues to evolve from a predominantly rural, agriculture-based state to an urban/suburban technology-based state, increases in renter-occupied multifamily housing units (as well as commercial office space) have equaled or exceeded the growth in single family owner-occupied housing units, particularly since the 1970s. This trend has resulted in the rapid growth

of the multifamily rental industry (as well as the concurrent rapid growth in the commercial office industry) and substantial impact upon the Virginia real estate industry (particularly in the leasing and management of multifamily residential housing and commercial office space).

However, AOBA asserts, the pre-licensing and re-licensing training and education of the real estate professional whose primary work lies outside of the field of single family leasing and home sales has not evolved to reflect the dynamic growth in the multifamily residential housing (and commercial office) sectors of the real estate industry. Under existing Virginia statutory and regulatory requirements, multifamily residential rental (and commercial office space) leasing and management professionals are governed by the same regulations and training and education requirements governing single family home sales and leasing professionals. Despite the fact that the professional knowledge, skills, and abilities requisite for multifamily residential (and commercial office) leasing and property management are substantially different from those requisite for single family home sales and property management, the matter and content of the pre-licensing and re-licensing training and educational requirements for multifamily professionals is limited.

Currently, the Board issues only a real estate salesperson's or a broker's license, each of which covers all fields of real estate practice in the Commonwealth. However, AOBA advises that there is substantial support within the Virginia multifamily residential (and commercial office) real estate communities for a broader pre-licensing curriculum base and/or a broader curriculum base for continuing education and relicensing.

RECOMMENDATIONS

The Subcommittee sought to ensure that the pre-licensing and re-licensing system for realtors, together with the general administration of that system by the Real Estate Board and its administering agency, the Virginia Department of Professional and Occupational Regulation, meets the broad needs of the professional real estate industry as a whole. In so doing, the Subcommittee recommended that the Virginia Real Estate Board shall incorporate into its proposed regulations and publish those regulations for public comment -- prior to the last day the General Assembly in its 1998 session mandates for the introduction of legislation -- the following provisions relating to continuing education credit for licensed real estate professionals:

- a mandatory two-credit hour requirement for ethics training prior to biannual re-licensing
- a comprehensive listing of courses, pre-approved by the Board, related to the professional competency requirements of the commercial office and multifamily residential industries (as required by 1997 legislation)
- objective criteria for evaluating and approving continuing education course credits and for awarding credit hours for such courses
- approval of recommended course titles, content, and hours of continuing education credit (not more than six hours per course) developed and published by national professional real estate trade associations (e.g., National Apartment Association, National Association of Realtors), unless the Board has documented evidence indicating why such titles, content, and credit hours should not be approved.

The Commission subsequently unanimously approved and recommended all of the Subcommittee's recommendations.

THE RAPIDLY EXPANDING INCREASE IN THE CONSTRUCTION, LEASING, AND PROPERTY MANAGEMENT ACTIVITIES OF MULTIFAMILY HOUSING CONSTITUTES A MAJOR GROWTH INDUSTRY IN VIRGINIA WHILE PROVIDING A VARIETY OF HOUSING SPACE TO MEET THE NEEDS OF VIRGINIANS.



SENATOR JANE H. WOODS

AFFORDABLE ASSISTED LIVING FACILITIES FOR THE ELDERLY

ISSUE

Nationally and in the Commonwealth, the concept of assisted living has emerged in recent years as an important link in the continuum of care for the elderly. Indeed, the burgeoning assisted living industry is market driven, evolving in response to consumer demand for personal ability to maintain maximum independence while receiving quality services, as needed, in a secure environment. While assisted living services may be provided in one's home, an assisted living facility is generally defined as a residential setting where appropriate personal care services, 24-hour supervision, and assistance are provided in an environment which fosters maximum independence and promotes individual dignity.

Although numerous assisted living facilities are operating in the Commonwealth (particularly in urban areas) and many more are in the planning or construction phases, the cost of residency in most such facilities lies beyond the reach of a majority of seniors. Nationally, the concept of affordable assisted living facilities is emerging as a cutting edge issue. Clearly, the need for such facilities is ripe for discussion in Virginia.

At the request of the Commission Executive Director, the Commission Chairman placed the issue of affordable assisted living facilities for the elderly on the Commission 1997 study agenda. Subsequently, the Chairman referred the matter to a Commission Subcommittee chaired by Senator Stanley C. Walker, who also serves as Chairman of the Joint Commission on Health Care. In addition, the Commission Chairman appointed to the Subcommittee Senator Jane H. Woods, also a member of the Health Care Commission and Chair of its Long Term Care Subcommittee.

Included in Subcommittee membership are assisted living facility and senior housing developers and administrators; federal, state, and local government officials; and legislative counsel for trade associations representing nursing homes, assisted living facilities, and continuing care retirement communities. In sum, the study has brought together, for the first time, key players in the public, private, and nonprofit sectors and initiated a dialogue on complex assisted living housing and service issues of interest individually and collectively.

BACKGROUND

DEMOGRAPHICS OF VIRGINIA'S ELDERLY POPULATION

According to the 1990 U.S. Census, Virginia had nearly 870,000 persons over the age of 60, of whom nearly 60,000 were over the age of 85. These numbers are projected to increase to 1.038 million persons over the age of 60 by the year 2000, of whom nearly 90,000 will be over the age of 85, and to 1.3 million over age 60, of whom more than 117,000 will be over age 85, in 2010.

Factors to consider in determining the need and affordability of assisted living facilities for the aging population are the number of older persons, the number living alone with mobility

and self care needs, and the number living in poverty. Of the nearly 870,000 persons over 60 in 1990, more than 218,000 lived alone and 15,000 had limitations with mobility and self care. Of the 218,000 plus persons over 60 living alone, over 108,000 had incomes of less than \$10,000; over 81,000 had incomes between \$10,000 and \$30,000; and over 29,000 had incomes above \$30,000. The median income was \$10,382; the mean income was \$16,567.

CURRENT STATUS OF ASSISTED LIVING FACILITIES IN VIRGINIA

Virginia recognizes two levels of assisted living care: regular and intensive assisted living services. The former relates to individuals who are dependent in two or three activities of daily living (ADLs) or in behavior patterns; the latter refers to individuals who are dependent in four or more ADLs or a combination of ADLs and cognitive or behavior impairments. Virginia licenses facilities providing each level of care as Adult Care Residences and the Department of Social Services Standards and Regulations include additional requirements for the assisted living facilities.

The Department of Social Services indicates that there are 612 licensed adult care residences with a total of some 27,500 beds. Assisted living is provided in 494 of the adult care residences. Facility size ranges from 4 to 635 beds with the average facility having 45 beds. Seventy-one percent of the residences accept auxiliary grant residents; all residents are auxiliary grant recipients in 35 percent of the residences.

The Commonwealth provides for two levels of payment for publicly funded residents of assisted living facilities. For regular assisted living, payment includes the auxiliary grant payment of \$725 (\$799 in Planning District 8) and an additional \$90 per resident per month. Intensive assisted living services are reimbursed at \$160 per month by Medicaid in addition to the auxiliary grant.

A telephone survey to four randomly selected assisted living facilities in Richmond revealed private pay charges that range from \$1,310 to \$2,185 per month. In addition, some facilities require deposits and others have significant deposits for life care, with varying arrangements for a return of such fees.

Assisted living facilities are located around the Commonwealth, although facilities available to the auxiliary grant population or private pay individuals are not located in every locality. Some areas, such as southwest Virginia, have a significant number of localities without facilities.

FUNDING SOURCES

A variety of federal, state, and local funding sources are designed to foster development of assisted living facilities and provision of services therein. Sources for facility development have included but are not limited to the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of Agriculture/Rural Development (formerly Farmers' Home), federal Low-Income Housing Tax Credits, and the Virginia Housing Partnership Fund. Government funding for services provided in assisted living facilities includes SSI, auxiliary grants, Medicaid, and Veterans Administration opportunities. Certain facilities, especially

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COMMISSION EXECUTIVE DIRECTOR
AND COUNSEL NANCY M. AMBLER

those that do not accept public funding, provide limited full and partial scholarships for residents in need of financial assistance.

Some individuals are able to pay for their own care in assisted living facilities, either through available cash resources or through strategies such as sale of certain assets to invest in a life care facility that provides a comprehensive range of services. Other individuals pay for assisted living as well as other levels of care through the purchase of long term care insurance.

STUDY APPROACH

At its first meeting, the Subcommittee reviewed the current status of assisted living facilities, including licensure and public payment levels; demographics of Virginia's elderly population and the related need for affordable, quality care facilities; funding sources for developing and operating such facilities; other resources for providing assisted living care; and public policy issues relating to assisted living in the Commonwealth. During the course of the study, Subcommittee members also participated in a day of site visits to assisted living facilities in the Richmond area.

Following its site visits, the Subcommittee identified major issues and trends to be monitored and studied in 1998. The Subcommittee expects that comprehensive recommendations on affordable assisted living facilities will be presented to the Commission at its 1998 legislative meeting. Following is a summary of study issues (which summary is not exhaustive) pending before the Subcommittee in 1998 and unanimously approved by the Commission for ongoing study.

PENDING STUDY ISSUES

FUNDING SOURCES (DEVELOPMENT/BUILDING COSTS AND RESIDENT CARE SUBSIDIES)

Government (Federal, State, and Local)

- Medicaid, including waiver programs
- U. S. Department of Housing and Urban Development
- U. S. Department of Agriculture/Rural Development
- Mortgage Insurance
- Auxiliary grants
- Bonds (taxable and tax-exempt) and potential reduction/subsidy of issuance cost
- Virginia Housing Development Authority
- Virginia Housing Partnership Fund
- Potential tax exemption of interest rates
- Local government funding
- Voucher systems

Private Sector

- Financial institutions
- Long term care insurance

Nonprofit Organizations

- Foundations ("Fellowship Funds")
- Faith community
- "Fraternal" organizations

OTHER ASSISTED LIVING MODELS

Chains of facilities sharing support resources and reduced development costs

Local government-initiated adult care residences

MODELS OF HOUSING/CARE PROVIDING CARE COMPARABLE TO ASSISTED LIVING FACILITIES

In-home care

Private home-setting care

Cluster care in federally subsidized housing

RELATED ISSUES

Inadequate state agency coordination regarding elderly housing issues among the Department of Housing and Community Development, Virginia Housing Development Authority, Virginia Department for the Aging, and the Virginia Department of Social Services

Inadequate financing availability

Gap in facilities available for residents with financial resources exceeding Auxiliary Grant income levels but inadequate for "self-pay" at private facilities

Coordination among "housers" and licensed home care agencies

Issues facing housers called on to provide services for which they are not licensed

Regulatory Barriers

- Training requirements
- Zoning codes
- Administrative requirements.⁴

⁴The Commission and its Executive Director express sincere appreciation to Wilda M. Ferguson, President, Care Options, Inc., Richmond, for her assistance in this study.

THE VIRGINIA HOUSING PARTNERSHIP FUND WAS CREATED AND CAPITALIZED BY THE 1988 GENERAL ASSEMBLY OF VIRGINIA AT THE RECOMMENDATION OF THE VIRGINIA HOUSING STUDY COMMISSION.

VIRGINIA HOUSING PARTNERSHIP FUND ALLOCATIONS AND PRODUCTION

The Virginia Housing Partnership Fund was created and capitalized by the 1988 General Assembly of Virginia at the recommendation of the Virginia Housing Study Commission to foster the development of housing opportunities for low- and moderate-income Virginians. The Partnership Fund, which is comprised of nine separate programs, is administered by the Virginia Department of Housing and Community Development and the Virginia Housing Development Authority.

Allocation and production data for the Fund is not available from DHCD in any comprehensive format. Rather, data may be provided on request for individual programs by the departmental administrators for the respective programs. In recent years, concerns have been expressed that it has become increasingly difficult to receive Partnership Fund data from the agency. The situation is complicated by the fact that different administrators for Partnership Fund programs have kept program records in different formats, and most of the original program administrators have resigned from the agency.

Therefore, the Virginia Housing Study Commission in 1997 contracted with the Virginia Housing Coalition to collect all Partnership Fund allocation and production data available from DHCD and assemble it in a comprehensive program by program, locality by locality format. That document, distributed to Commission members at the 1997 legislative meeting, provides the only comprehensive Partnership Fund allocation and production information available to date.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY ISSUES

The Virginia Housing Development Authority requested at the annual legislative meeting of the Virginia Housing Study Commission that the Commission consider approving and recommending the following legislative initiatives:

- Amend Section 36-55.44 of the *Code of Virginia* to authorize VHDA to (a) deposit funds with federal home loan banks, (b) invest its funds in investments rated AA or Aa by Moody's Investors Services, Inc., or Standard & Poor's Rating Group, respectively, and (c) enter into contracts for the custody, securing, and investment of VHDA funds with parties who make loans to VHDA but who are not holders of VHDA notes or bonds.
- Amend Section 36-55.40 of the *Code* to permit VHDA to purchase or own its notes or bonds without such notes or bonds or the indebtedness evidenced thereby being canceled or extinguished.
- Amend Section 36-55.30 of the *Code* to authorize VHDA to (a) enter into agreements with the federal government (in particular, the U.S. Department of Housing and Urban Development) or other parties to provide services and assistance in the restructuring of federally owned, financed, or assisted multi-family housing developments and (b) to indemnify the federal government or other parties in connection with the provision of such services.

The Commission subsequently unanimously approved and recommended each of the VHDA recommendations.

VIRGINIA HOUSING STUDY COMMISSION 1997 SUBCOMMITTEES

HOUSE JOINT RESOLUTION 554: INDOOR PLUMBING ASSISTANCE

The Honorable Jackie T. Stump,
Chairman
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HOUSING AUTHORITIES**

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